

**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION**

**CIVIL NO. 1:03CV218**

**CARROLL MOORE,** )  
 )  
 **Plaintiff,** )  
 )  
 **Vs.** )  
 )  
 **CITY OF ASHEVILLE, NORTH** )  
 **CAROLINA; JAMES L. WESTBROOK,** )  
 **JR., in his official capacity as the City** )  
 **Manager of Asheville, North Carolina;** )  
 **and ASHEVILLE POLICE** )  
 **DEPARTMENT,** )  
 )  
 **Defendants.** )  
 \_\_\_\_\_ )

**ORDER**

**THIS MATTER** is before the Court on the Plaintiff's motion to vacate the Amended Judgment filed in this matter on June 1, 2005.

At the time the undersigned entered the Amended Judgment, Plaintiff had not advised the Court that a petition for a writ of *certiorari* had been filed with the United States Supreme Court. Had he done so, the Court would have postponed acting on the mandate of the Fourth Circuit until such time as the petition had been considered.

The Court will vacate the amended judgment under the circumstances. Should the Supreme Court grant the petition, counsel for all parties are encouraged to place before that Court the questions raised here concerning dismissal with or without prejudice.

**IT IS, THEREFORE, ORDERED** that the Amended Judgment entered June 1, 2005, is hereby **VACATED**.

**IT IS FURTHER ORDERED** that Plaintiff's counsel is instructed to advise this Court of the ruling of the Supreme Court in connection with the petition for a writ of *certiorari*.

**Signed: July 22, 2005**

A handwritten signature in dark ink, appearing to read 'L. H. Thornburg', written over a horizontal line.

Lacy H. Thornburg  
United States District Judge

